1995

Nilson-Newey and Company v. Utah Resources International, Tonaquint, Inc., John H. Morgan, Jr., Daisy Morgan, Resources Limited Partnership, Tonaquint-Indian Hills Limited Partnership, Country Club Partnership, Southgate Plaza Limited Partnership, Southgate Palms Limited Partnership, Southgate Resort Limited Partnership, Service Station Limited Partnership #2 : Reply Brief

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

NILSON-NEWEY & COMPANY, A Utah Partnership Plaintiff and Appellant vs. UTAH RESOURCES INTERNATIONAL, A Utah Corporation, TONAQUINT, INC., A Utah Corporation, JOHN H. MORGAN, JR., DAISY MORGAN, RESOURCES LIMITED PARTNERSHIP, TONAQUINT-INDIAN HILLS LIMITED PARTNERSHIP, COUNTRY CLUB PARTNERSHIP, SOUTHGATE PLAZA LIMITED PARTNERSHIP, SOUTHGATE PALMS LIMITED PARTNERSHIP, SOUTHGATE RESORT LIMITED PARTNERSHIP, and SERVICE STATION LIMITED PARTNERSHIP #2 Defendants and Appellees	APPEAL 95-0126-CA Case No. ~~940460~~

Priority 15

REPLY BRIEF OF APPELLANT

On Appeal from the Judgment of the Third District Court
In and for Salt Lake County
Honorable J. Dennis Frederick, Judge

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INTRODUCTION

This Reply Brief responds only to the Appellees' Brief of the Corporate and Partnership Defendants. No Brief has been filed by or on behalf of defendants, John H. Morgan, Jr. or Daisy Morgan. In the event one is ever filed, Nilson-Newey specifically reserves the right to file a reply brief thereto. Pursuant to Rule 26 (c), URAP, Nilson-Newey hereby moves that John and Daisy Morgan not be heard at oral argument.

ARGUMENT

The attention of this Court might be drawn away to side issues if it does not step back and look at the entire panorama from a distance. This is the picture upon which Nilson-Newey respectfully requests this Court focus.

1. Nilson-Newey is entitled by integrated contracts to share in profits from the sale and development of the 906 Acres.

2. Those contracts contain continuing covenants, which accrue fresh every year.

3. With each new year has come a new cause of action.

4. Appellees specifically deny that profits have yet accrued for any year.

5. No court has determined whether profits have accrued in any given year.

6. The Trial Court has prematurely denied Nilson-Newey:

   a. the right to examine the method of accounting for profits, for even the most recent years.

   b. access to the courts to recover profits which may have accrued, even in the most recent years.

   c. the right to claim an interest in profits in the future.

7. Nilson-Newey's right to an accounting and also to receive its share of profits continues to this day.

8. Only after an accounting, even if only based upon records and data available today, can it be determined whether profits have accrued, and in which years.

9. Only if it is determined that profits exist in a particular year could a cause of action accrue from that year sufficient to start the statute of limitations or to raise a concern about laches.

10. Facts and law dealing with tolling statutes of limitations come into play only once it is determined that a cause of action for a particular year exists.

An examination of these points in light of Appellees' Brief follows:

I. Nilson-Newey is entitled by integrated contracts to share in profits from the sale and development of the 906 Acres.

It has been claimed that Nilson-Newey owns nothing more than an interest or stock in a defunct entity. That claim is supported neither by the facts nor the law. In May of 1975 B & E Securities sold all of its assets to Nilson-Newey. Nilson-Newey received much more than merely a Certificate. John Morgan was reminded by Joseph M. Newey on March 1, 1993, that Nilson-Newey actually purchased "all of the assets of B & E Securities". (See Affidavit of Joseph M. Newey, Exhibit B at R.248) Therefore, Nilson-Newey acquired and still owns at least the following:

1. 48,199 units in S.W. Associates (which entity may have owned significant shares in URI at the time, as discussed below,) as evidenced by the Certificate to which reference has been made. (R.102); and,

2. The interest of B & E Securities in the valuable Disclaimer of Interest In Real Property ("Disclaimer") a copy of which is attached as Addendum "C" to this Reply Brief.

The Disclaimer is an agreement between two parties--B & E Securities and the predecessor of defendant, Tonaquint, Inc., Williamsburg-West, Incorporated. Two other agreements are integrated into the Disclaimer. They include the following:

a. The Syndicate Agreement dated January 27, 1961, a copy of which is attached hereto as Addendum "A"; and,

b. The Amendment to the Syndicate Agreement dated July 12, 1961, a copy of which is attached hereto as Addendum "B".

These three agreements, all jointly referred to herein as the "Contract", was an asset of B & E Securities. It is now an asset of Nilson-Newey. The Disclaimer specifically states:

> "NOW, THEREFORE, in consideration of the premises and $1.00 receipt of which is hereby acknowledged by B & E Securities, Inc., from Williamsburg-West, Incorporated and in consideration of the said Williamsburg-West, Incorporated reaffirming that it is the beneficiary of the contributions made by B & E Securities, Inc. to the above referred to syndicate and is subject to all obligations of the aforesaid syndicate agreement and will comply thereunder in all actions related to the distributions of profits distributable under said syndicate agreement;..." (Emphasis added) (R.92 and Addendum "C" to this Reply Brief)

Pursuant to the Disclaimer B & E Securities disclaimed any interest it formerly had in the real property in exchange for the promise of Williamsburg-West to honor the previously existing profit distribution agreement as set forth in the Syndicate Agreement. The Disclaimer was assigned to Nilson-Newey which has, until recently, been patiently waiting for Williamsburg-West and its successor, Tonaquint, Inc. to declare and distribute profits.

This was no secret in July of 1993 when the Directors of URI signed a Form 10-K with this management comment:

> "The successors in interest of certain persons who originally held interests in the property now owned by Tonaquint are entitled to a percentage of Tonaquint's profits. This interest arises under an agreement dated January 27, 1961, as amended, and provides that such persons are entitled to a percentage interest based on contributions made under that agreement. Management believes that expenses paid by the Company and Tonaquint for the development of Tonaquint's property have reduced the percentage interest held by such persons, that such interest is no more than 4.8% and further that no liability to such persons has accrued to date, due to expenses incurred primarily by the Company related to furthering the development of the property owned by Tonaquint. No assurance can be given that this position would be upheld if subjected to litigation." (R.30-31)

The "successors in interest" mentioned above is Nilson-Newey. In addition to the interest in the Disclaimer, B & E Securities sold Nilson-Newey its interest in S.W. Associates. It is alleged by defendants that "S.W. Associates was effectively defunct by 1973." (Appellees' Brief at p. 40) What defendants have overlooked is their own admission in the Form 10-K signed on June 18, 1981, by John H. Morgan, Jr., as President of Utah Resources International.

> "In March 9, 1970, Utah Resources issued 1,390,000 shares of its stock, primarily to affiliates and related parties, in consideration of the conveyance, by those receiving stock, of real property and various mineral and oil and gas or other rights pertaining to real property. Four hundred seventy-six thousand and eight hundred of the shares were issued to S. W. Associates, a joint venture, in consideration of the conveyance to the Company of approximately 906 acres of non-mineral land located in Washington County, near St. George, Utah." (R.27) (emphasis added)

Therefore, according to defendants, S.W. Associates actually held the shares in URI beginning in March of 1970. There is no evidence before the Court regarding how long those shares were held by S.W. Associates.

That same management discussion, signed in 1981, continued by describing the impact of the Disclaimer Agreement:

> "B & E Securities, by a document dated August 30, 1973, renounced all right, title, and interest which it might have had in or to the approximately 906 acres in question in consideration of an agreement entered into by and between Williamsburg-West (Tonaquint) and B & E Securities. The agreement provided that B & E would share in the profits of any development or sales of the 906 acres based on the ratio of the approximately $48,198.80 originally invested by B & E Securities to purchase the land over the total dollars invested by all of the S & W joint venturers.
>
> B & E Securities received no Utah Resources stock or Williamsburg-West stock in consideration of the disclaimer of its interest in the Washington County, St. George real properties. . . The profits interest held by B & E Securities applies to the entire original 906 acres. The agreement has been interpreted by Utah Resources and Tonaquint as requiring distribution of profits only after all losses have been recouped by the land holders and cost of property have been recovered. There have been no distributions of profits to date."

Hence, the assets acquired from B & E Securities included at least 48,199 units of interest in S.W. Associates (which may have still owned shares in URI) and the interest of B & E Securities in the Disclaimer. The Certificate has been identified in this action, not by way of limitation, but as evidence of the acquisition of the interest B & E Securities had in S. W. Associates and in the terms of the Disclaimer which continued the profit sharing agreement for the benefit of B & E Securities. John Morgan was aware of that fact later in the "summer of 1975" (September 12, 1975, to be exact) when he first "acknowledged the ownership interest of Nilson-Newey". (R.12) Subsequent writings have reaffirmed it. The assignment to Nilson-Newey was not a "nullity" as defendants would have this Court believe, but a

meaningful transfer of significant assets that still have value today.

II. Those contracts contain continuing covenants, which accrue fresh every year.

Nilson-Newey asked the trial court to determine whether the relationship that remains is that of a partnership, a trust, or something else. Had the trial court done so it would have aided both it and this Court in the application of standards under the law. What is clear, however, is that a contractual relationship of some kind exists that can be quantified, if not identified.

The terms incorporated from the Syndicate Agreement and agreed in the Disclaimer for the benefit of Nilson-Newey's predecessor, referenced on pages 4-6 of Appellant's Brief and in Addenda A, B and C to this Reply Brief, make a Contract that called for "an obligation" on the part of what is now Tonaquint, Inc. "to distribute all profits from the sale or other disposition of such property to the subscribers pro-rata." This is the Contract with continuing covenants. The payments were contemplated to be contingent upon a determination of "profits", which determination, as demonstrated in the Forms 10-K of URI, is an annual procedure. Therefore, this in an installment contract with payments to be made, so long as there are profits, at least once each year.

The Utah State Supreme Court dealt with a similar contract in 1906 and has never changed its view since that time. In the case of Johnson v. Johnson, 88 P. 230 (Utah 1906) the court examined a contract entered into in 1891, 14 years prior to the time the action was filed, calling for payment of "one-half of all the crops

which would be produced each year upon the land described in said deed." (Id. at 230) The court went on to say:

> "The payments were thus to be made in yearly installments, and the amount thereof was to be governed by the amount or value of the annual crops raised upon the land, and were to continue during the natural life of respondent. . . . The agreement thus was not one for an estate or interest in land. The respondent had no interest in the land as such. He only had a right to one-half of the product, or value thereof." (Id. at 231)

In an attempt to avoid payment for the most recent years, the party holding title to the land sought protection from the statute of limitations, arguing that an action brought in 1905 on a contract made in 1891 was barred. The Court looked not at when the agreement was entered into, but at the nature of the payment arrangements and noted the "the action involved only the installments falling due for the years 1903 and 1904." (Id. at 231)

> "The contract is a continuing one during the life of respondent, but maturing in installments of yearly payments. It cannot be legally discharged without the consent of respondent until his death, but may be enforced by proper action wherever and as often as an installment falls due and remains unpaid." (Id. at 232)

This Utah case, uniquely parallel with the facts of ours, states the recognized view of the law of installment contracts.

In an action in Oklahoma in 1937 for damages for failure on the part of a lessee to comply with lease terms requiring it to drill wells in 1929 to drain certain real property of the lessor raised the statute of limitations as a defense. In that case, Indian Territory Illuminating Oil Co. v. Rosamond, 120 P.2d 349 (Okla. 1941) at 352, the court said:

> "We are of the opinion, and hold, that plaintiff's right to maintain the action is not barred by the statute

> of limitations. The implied covenant of the lease, that the lessee will protect the land from drainage by adjoining wells . . . is a continuing covenant, the obligation resting upon the lessee during the existence of the lease, or as long as his ownership thereof continues. . . . The implied covenant being a continuing covenant, the right to maintain an action for its breach continues so long as the breach continues and plaintiff is damaged thereby." (Emphasis added)

Utah has no more recent cases than Johnson v. Johnson, but surrounding jurisdictions consistently holding that where contract obligations are payable by installments the statute of limitations begins to run only with respect to each installment when due. Some of those cases are noted below.[1]

III. With each new year has come a new cause of action.

Liability accrues under the profit sharing agreement at the time profits are determined to exist. URI typically received completed audited annual financial statements in March or early

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[1] Clayton v. Gardner, 813 P.2d 997, 999 (Nev. 1991) "It is further settled that where contract obligations are payable by installments, the limitations statute begins to run only with respect to each installment when due..."; Fourth Nat. Bank of Tulsa v. Appleby, 864 P.2d 827, 832 (Okl. 1993) "Where a contract provides for installment payments, and the payee has a right to sue upon default on any payment, the statute of limitations on each installment begins to run from the date of the payor's failure to make payment." See also Oklahoma Brick Corporation v. McCall, 497 P.2d 215 (Okl. 1972); Bowman v. Oklahoma Natural Gas Company, 385 P.2d 440, 447 (Okl. 1963) ". . .the fact that a portion of the claim is barred by the statute of limitations will not prevent a recovery for the part which has not become barred by the time suit is filed."; Application of Church, 833 P.2d 813, 814 (Colo. App. 1992) ". . . if a money obligation is payable in installments, a separate cause of action arises on each installment and the statute of limitations begins to run against each installment when it becomes due."; Welty v. Western Bank of Las Cruces, 740 P.2d 120, 122 (N.M. 1987) ". . . under contract obligations payable by installments, the statute would have begun to run only with respect to each installment when due."

April of the next calendar year. Only when the financial statements are signed could profits be declared and after a reasonable notice period to Nilson-Newey could the right of payment accrue. Assuming that, and recognizing the defendants have denied the accrual of any profits at all, if profits were earned for the calendar year 1987, defendants would have known that and been in a position to pay a percentage to Nilson-Newey no earlier than sometime in March of 1988. This action was filed on March 7, 1994. Hence, the six year statute of limitations may well not have run on the payment of profits for the calendar years 1987 through 1992 and the calendar year 1993 would still have been anticipatory.

Laches, like the statute of limitations, should be viewed in this case <u>one year at a time</u>. Can Nilson-Newey be said to have slumbered on its rights by enquiring about and seeking recovery of potential profits for the year 1993 in a case filed in 1994? What about 1992 or 1991?

The trial court has taken a punitive action that seems to preclude Nilson-Newey from ever learning about or recovering profits that have even recently accrued or may accrue in the future.

IV. Appellees specifically deny that profits have yet accrued for <u>any</u> year.

Appellees reaffirm their posture in Appellees' Brief at 35-36 that according to their methods of accounting no profits have ever accrued.

> "First, the Forms 10-K unequivocally deny any accrual of profits and any potential distribution of profits."

As a result, pursuant to Utah Law at Utah Code § 78-12-1 no statute of limitations ever started running.

> "Civil actions may be commenced only within the periods prescribed in this chapter, after the cause of action has accrued . . . "

V. No court has determined whether profits have accrued in any given year.

Nilson-Newey became suspicious when reading the Enterprise article of February 22, 1993 (R.246 and attached as Addendum "D" to this Reply Brief) that Appellees had been making profits that were not being reported to it. This action was brought only after discussions with Appellees failed to produce any meaningful report of potential profits from which Nilson-Newey might expect to receive a percentage. The goal in filing was to seek a court clarified accounting to determine whether profits had in fact accrued for the benefit of Nilson-Newey and in which years, and then to seek recovery of Nilson-Newey's rightful percentage. Also sought was the Court's help in assuring that Nilson-Newey would receive proper accountings and payments in the future. It was anticipated, based upon prior performance, that there would be future breaches.

If it turned out that records were not available for a particular year or years in the 1970's, (Nilson-Newey's rights began in 1975) the defense could then be raised for those particular years that it was impossible to provide a complete accounting. The Court could then determine whether profits could be rightfully determined. The years closer to the time of filing are more likely to have complete data, particularly since URI has

been a publicly reporting company with audited financial statements at least since the calendar year 1981.

VI. The Trial Court has prematurely denied Nilson-Newey:

a. the right to examine the method of accounting for profits, for even the most recent years.

b. access to the courts to recover profits which may have accrued, even in the most recent years.

c. the right to claim an interest in profits in the future.

Rather than deal with each year on its own merits, in absence of any clear ruling, we can only assume that the Court took the easy way out by determining that if an accounting for 1975 were too much to ask, the defendants should be exonerated from any responsibility for accounting for 1993 as well. Furthermore, before determining whether any profits had accrued in any specific year, the Court must have assumed that profits did accrue long ago and because we didn't seek them in 1975 or immediately thereafter, we are not entitled to ask for recovery for profits earned in 1987, 1988 or even in 1993. What about 1994 and beyond? Rather than focusing on the critical nuances created by the facts in this case, the Trial Court must have felt because Nilson-Newey first acquired its rights in 1975 that everything must be too old.

VII. Nilson-Neweys' right to an accounting and also to receive its share of profits continues to this day.

Nilson-Newey believes the relationship created by the Contract was that of a Trust, be it express, resulting or constructive. (See Point 6 in the Appellant's Brief, pp. 33-37) Recall the case of Walker v. Walker, 404 P.2d 253 (Utah 1965) where the court ruled:

> "Defendant's invocation of the statute of limitations and laches runs counter to the rule that such a defense is not available to a trustee as against his beneficiaries until something has occurred to give a clear indication to them that he has repudiated his trust; or the circumstances are such that they must be charged with knowledge of such repudiation."

Nilson-Newey could not be "charged with knowledge of such repudiation" until there actual was a repudiation. If Appellees had honestly repudiated the relationship they would not have continued, year after year, reaffirming it in their Forms 10-K. For this argument it matters not who received the Forms 10-K, but who signed them. Remember, in every management discussion in every Form 10-K for the years 1985, 1986, 1987, 1988, 1989, 1990, 1991, and 1992, the language is identical. It reads:

> "The successors in interest of certain persons who originally held interests in the property now owned by Tonaquint, Inc. are entitled to a percentage of Tonaquint's profits." (R.27-29)

That is not a repudiation. It is an affirmation. How can Nilson-Newey be charged with knowledge of repudiation when there was none. Appellees have not cited one example before 1993 when anything was said or written by Appellees that could be viewed as a repudiation of the relationship or the obligation. It is more reasonable to assume Appellees were being honest on the Forms 10-K while not facing a legal challenge than under the pressure of this litigation.

Issues of the right to a partnership accounting have been addressed in Appellant's Brief at pages 37-39. In the event the relationship is determined to be a partnership, that partnership has never been dissolved. Nilson-Newey is seeking dissolution and

an accounting simultaneously in it action.

VIII. Only after an accounting, even if only based upon records and data available today, can it be determined whether profits have accrued, and in which years.

The trial court was in not position to determine that the complaint ought to be dismissed for laches or a violation of the statute of limitations without first knowing in which years profits, and therefore, a cause of action accrued. This matter should be remanded back to the trial court for the purpose of taking sufficient evidence to determine if and when profits ever accrued for the benefit of Nilson-Newey.

IX. Only if it is determined that profits exist in a particular year could a cause of action accrue from that year sufficient to start the statute of limitations or to raise a concern about laches.

The statute is very clear that the statute of limitations does not even begin to run until "after the cause of action has accrued". (Utah Code § 78-12-1)

Inasmuch as the Contract is viewed as an installment contract with continuing covenants that begin each year, it is essential to know in which years profits accrued to start the time running.

X. Facts and law dealing with tolling statutes of limitations come into play only once it is determined that a cause of action for a particular year exists.

Appellees have concentrated on Nilson-Newey's defense that any statute of limitations that may have been started (although none likely has) was tolled. Without reiterating material in the Appellant's initial Brief, Nilson-Newey will address some of the additional issues and law raised by Appellees in their Brief.

Appellees contend that Nilson-Newey knew more than it wants to

admit. Nilson-Newey is not hiding from the fact that it was aware of all of the initial foundation documents which create the Contract. It paid B & E Securities dearly for the rights contained in them. What it did not know and never had reason to believe until it became aware of allegations of misconduct within the corporation was that profits may in fact have been generated from the development and sale of the 906 Acres but never reflected in the consolidated financial statements of URI, due to the method of accounting undertaken by URI as the parent of Tonaquint, Inc.

Appellees argue that Nilson-Newey should have seen the forms 10-K before 1993 and relied upon them while in the same breath arguing that representations in the forms 10-K could not be deemed an acknowledgement of an existing debt.

Appellees set forth a series of cases arguing that Nilson-Newey did not diligently pursue sufficient investigation to uncover the fact that profits may well have accrued. To this day, Appellees continue to deny that profits have accrued. An examination of the cases relied upon by Appellees does not strengthen their argument.

First, they rely upon the case of Daugherty v. Farmers Cooperative Assoc., 689 P.2d 947, 951 (Okla. 1984) and attempt to parallel that case with the one at issue before this Court. In that case, the plaintiff had been exposed to a pesticide between July 22 and August 1 of 1975.

> "Later that August, plaintiff began suffering numerous ailments, including numbness, weakness, paralysis, pain and burning sensations of the chest and extremities". Id.

at 948.

From that, the court determined that plaintiff should have begun pursuing inquiries plainly suggested by the facts. That factual scenario is hardly similar to the one at issue in this case.

Appellees rely on the case of Jolly v. Eli Lilly & Co., 752 P.2d 923, 927 (Cal. 1988) wherein the plaintiff first learned in 1972 that her mother, while pregnant with plaintiff, had ingested a synthetic drug that could have an adverse affect on plaintiff's health. Plaintiff was soon diagnosed with a pre-cancerous condition that, in 1978, became seriously malignant and required a complete hysterectomy. Nevertheless, she continued to wait to bring a cause of action until 1980. Once again, that plaintiff, confronted with serious illness, is not similar to this plaintiff which was quietly being abused without feeling any sensation.

Appellees discussed the case of Becton Dickinson & Co. v. Reese, 668 P.2d 1254 (Utah 1983) where they argue that due diligence on plaintiff's part would have unearthed the necessary information to bring a cause of action. That case is, on its face, self-distinguishing, where the court, at 1257 says

> "nor is this case premised on concealment of necessary facts or misleading of the defendant by the plaintiff. Finally, there are no exceptional circumstances here as to warrant judicial imposition of the discovery rule".

The case before this Court is soaked with evidence of concealment and other exceptional circumstances warranting the judicial imposition of the discovery rule.

Next, Appellees cite the case of Warren v. Provo City Court,

838 P.2d 1125 (Utah 1992), another in this string of cases where individuals who were seriously physically injured were put on notice to begin searching out causes of action. The Warren case involves an airplane crash and immediately thereafter, counsel was employed to prosecute claims. This case, in fact, highlights Nilson-Newey's theories at 1129 regarding the application of the discovery rule:

> ". . .in situations where the plaintiff does not become aware of the cause of action because of defendants' concealment or misleading conduct and (3) in situations where the case presents exceptional circumstances and the application of the general rule would be irrational or unjust, regardless of any showing that the defendant has prevented the discovery of the cause of action."

Appellees argue that Nilson-Newey should have been aware there were profits which would have started a statute of limitations running, however, every document prepared by them specifically states that no profits have accrued to date. Hence, no cause of action has yet accrued. There are other facts, however, which have caused Nilson-Newey to disbelieve the written affirmations of appellees that no profits had accrued and upon which Nilson-Newey brought the complaint. Before determining whether profits had in fact accrued, thereby starting the cause of action, the trial court dismissed the entire complaint as being untimely filed either on the basis of laches or the statute of limitations before determining whether or not a cause of action had ever accrued in the first place.

Again, in the case of Lord v. Shaw, 665 P.2d 1288 (Utah 1983) the plaintiff was well aware she had been mistreated although

failed to bring her cause of action timely. In that case, relied upon by Appellees, "she was choked, hit, beaten, lain on, stripped of her clothes and forced to submit to sexual intercourse". Id. at 1289. Certainly that case seems to lack evidence of concealment.

Appellees' case of Condos v. United Benefit Life Insurance Co., 379 P.2d 129 (Ariz. 1963) turned on the legal duty of one unable to read to have a document read to him and involves no allegations of concealment.

Next, the case of Benson v. Pyfer, 783 P.2d 923 (Mont. 1989) was an attempt by the plaintiff to rescind the purchase of a lot upon which he had made payments for five years. He continued to make payments anticipating certain improvements to be completed. Because of his continued monthly involvement relative to making payments, the court found at some point along the way, it became clear to him that the promised improvements were not going to be made and that awareness arose prior to the five years between contracting to purchase the lot and bringing the suit. Again, no parallel between that case and ours.

Appellees argue that the Enterprise Article argument is a "red herring" in that the article does nothing but create "unfounded guilt by association" (Appellees' Brief at 15).

An examination of the Affidavit of Joseph M. Newey (R. 240 - 247) with the Enterprise article attached thereto and to this Reply Brief as Addendum "D" makes it clear when Nilson-Newey first learned that;

> "a group of shareholders from Utah Resources International . . . has won a nearly $2 Million judgment

against the firm's officers and directors for gross mismanagement), abuse of power, waste and/or usurpation of corporate opportunities".

This was a startling revelation that immediately prompted inquiry regarding an accounting and concerns about waste of potential profits.

Appellees argue that Nilson-Newey received constructive notice of breach of a trust agreement and rely on the case of Leggroan v. Zions Savings Bank & Trust Co., 120 Utah 93, 232 P.2d 746 (1951) which Appellees wrongfully argue is "directly on point". Nilson-Newey re-emphasizes its arguments on pages 15, 24 and 25 of its initial brief. The cases are not at all similar. In the Leggroan case, there were, at least, a series of distributions which dwindled to nothing. In our case, there was never any distribution because Appellees continued to take the position that no profits had accrued.

Nilson-Newey reasonably anticipated payments based upon the original Contract, including the Syndicate Agreement and the Disclaimer, which was assigned to it.

Appellees claim to have been surprised by the claim of Nilson-Newey. If there is any surprise in this case, it is that Nilson-Newey began to understand what Appellees have been doing for many years in spite of Appellees' written affirmations to the contrary.

Appellees attribute great weight at the fact that most of the parties who were originally involved in 1961 have passed away. This is not a case that will be determined based upon peoples' memories but will be determined based upon accounting records, many

of which, unless they have been recently destroyed, are still likely in the possession of Appellees or their accountants. Nilson-Newey was denied the opportunity to discover those documents by the trial court. It is true, that Nilson-Newey's complaint is its own version of what has happened. If Nilson-Newey fails in trial, after having had exposure to the documents in the possession of Appellees, to prove certain elements of its causes of action, so be it. But to be precluded from inquiry, not just of individuals, but of records out of its control is an abuse of the trial court's discretion.

Appellees cite cases in a number of jurisdictions other than in Utah which they claim support their posture that an acknowledgment was never given under the publicly filed annual reports. Those cases appear in footnote 14 on page 26 of Appellees' brief and many are also referenced on pages 33-34. Nilson-Newey has examined each case and finds that most of them actual lend support to or deal with facts far different from Nilson-Newey's position. Among them are the following:

Root v. Thomas, 160 S.W.2nd 46, 47 (Ark. 1942) This case focuses on a private contract with another involved person signed with questionable authority wherein the Court stated "nor was it intended as an acknowledgment".

In re Miles' Estate, 164 P.2d 546, 550 (Cal.Dist.Ct.App. 1945) This case dealt with a letter to attorneys of the claimant. "Said letter was merely a statement that respondent had demanded security."

Heffelfinger v. Gibson, 290 A.2d 390 (D.C. 1972) This case openly supports Nilson-Newey's proposition wherein a letter from one attorney to a third party attorney stating that both attorneys would be liable to the Plaintiff was sufficient written acknowledgement to remove the Plaintiff's cause of action from the statute of limitations even though the letter was never delivered to the plaintiff.

Carnes v. Bank of Jonesboro, 198 S.E. 338, 339 (Ga.Ct.App. 1938) In this case letters of a deceased man to his executors expressed his desire to have them pay the notes that were "out of date". The Court noted "nor does it appear that these writings were communicated to anybody during the life of Claud H. Hutcheson", the debtor.

Mellema's Administrator v. Whipple, 226 S.W.2nd 318, 321 (Ky.Ct.App. 1950) An acknowledgement in an ex parte petition "was simply a statement to the court that she owed the debt, along with others, in order that she might obtain a certain fund in the hands of her trustee to pay the same."

Richard Guthrie & Associates v. Stone, 562 So.2d. 1071, 1072 (La.Ct.App. 1990) The only writing was a letter questioning the bill which only demonstrated "a recognition...of the existence of the disputed claim..."

Rickenbach v. Noecker Shipbuilding Co., 66 N.J.Super. 580, 169 A.2d 730, 734 (N.J. 1961) This is a very favorable case for Nilson-Newey. After discussing cases where notes in signed corporate balance sheets acknowledging debts were sufficient to interrupt the

statute of limitations, the Court noted the fatal weakness of that case in that "the claimant has offered no proofs showing that the corporate balance sheets or any writing making reference to them were signed by the officers having authority to bind the Defendant corporation."

McPhilomy v. Lister, 341 Pa. 250, 19 A.2d 143, 144 (1941) This revolves around an oral conversation by the deceased with a third party before his death saying "I'll see that she gets the money from time to time" coupled with at least one check without any "evidence to indicate the purpose for which it was given."

Layman v. Layman. 171 Va. 317, 198 S.E. 923 (Va.Ct.App. 1938) This is a very favorable case for Nilson-Newey. The Court held that an agreement between partners as to how the obligation was to be paid between them but which was not given to the Plaintiff did toll the statute of limitations where the Court believed the partners intended at some time to communicate the agreement between them to the Plaintiff.

Preston County Coke Co. v. Preston County Light and Power Co., 146 W.Va. 231, 119 S.E.2d 420 (1961) This is a very positive case for Nilson-Newey where the Court held that collection of a $257,000.00 balance in a 35 year old running open account between the parties was not barred by the statute of limitations even though all recent payments made had been applied to the most recent invoices.

Nilson-Newey's interpretation of the law still stands.

CONCLUSION AND STATEMENT OF RELIEF SOUGHT

Nilson-Newey owns a significant asset which it purchased from B & E Securities. It is an installment contract, with rights recurring each year. It is governed by Trust, Partnership, Securities, or Contract law. Appellees have annually reaffirmed the nature of the relationship and the right of Nilson-Newey to a percentage of profits, but have just as consistently asserted that no profits, and hence, no cause of action, has accrued. Inasmuch as the entire case was dismissed without any specific findings of fact or conclusions of law, Nilson-Newey is entitled to have each of its causes of action properly heard in full evidentiary hearings before a jury. Specifically, Nilson-Newey seeks and is entitled to the following:

1. To an order of this Court holding that:

A. Neither laches nor any statute of limitations could have run on the right of Nilson-Newey to seek an accounting of and recover profits determined to be due for the years 1987 through 1993.

B. Nilson-Newey shall not be denied the right, for each year from 1993 going forward until none of the Appellees has any further interest in the 906 Acres or its proceeds, to an accounting and a share of the profits generated from the sale or development of that land.

2. To an order of this Court remanding the case back to the District Court for the following:

A. To determine the nature of the relationship among

the parties and whether it should be governed by the law of Trusts, Partnerships, Securities, or Contracts.

B. To specifically determine the legal issues raised in the Complaint, including:

i. If a receiver ought to be appointed.

ii. If the partnership or trust relationship should be dissolved.

iii. The nature of the fiduciary duty owed to Nilson-Newey.

iv. If misrepresentations were made to Nilson-Newey and by whom.

v. If the defendants should be enjoined from further dissipation of the 906 Acres and its proceeds during the pendency of this action.

C. Compelling an accounting for those years in which sufficient records remain to do so.

3. Remanding the case back to the District Court to allow a jury to determine:

A. Whether and which of the Appellees have breached their fiduciary duties to Nilson-Newey.

B. Whether and which of the Appellees have breached their contract with Nilson-Newey.

C. The individual liability of each of the defendants, including John and Daisy Morgan.

D. Whether URI and Tonaquint are alter egos of John and Daisy Morgan and the amount of the judgment to be paid by them.

E. The percentage of the profits to which Nilson-Newey would be entitled.

F. Either the actual formula or the actual dollar amount of profits to which Nilson-Newey would be entitled and for which years.

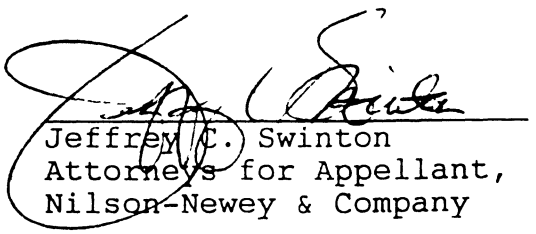
G. Whether the defendant partnerships are constructive trustees for the benefit of Nilson-Newey.

H. Whether and which of the defendants have been unjustly enriched at the expense of Nilson-Newey.

I. Any other damages to which Nilson-Newey may be entitled.

Respectfully submitted this 28th day of March, 1995.

STOKER & SWINTON



Jeffrey C. Swinton
Attorneys for Appellant,
Nilson-Newey & Company

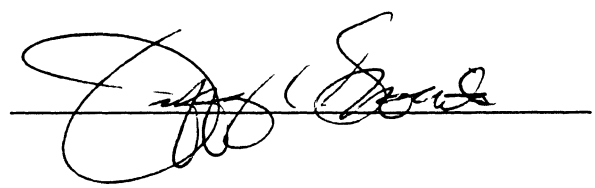
CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 28th day of March, 1995, two copies of the foregoing REPLY BRIEF OF APPELLANT were mailed, First Class mail, postage prepaid, to the following:

Jeffrey Robinson
Moyle & Draper, P.C.
600 Deseret Plaza
No. 15 East First South
Salt Lake City, Utah 84111-1915

Joseph C. Rust
Kesler & Rust
2000 Beneficial Life Tower
36 South State Street
Salt Lake City, Utah 84111

John M. Wunderli
5965 South 9th East
Salt Lake City, Utah 84121



ADDENDUM

Tab A

SYNDICATE AGREEMENT

SYNDICATE

KNOW ALL MEN BY THESE PRESENTS:

In consideration of the mutual promises and covenants herein contained, the undersigned do hereby subscribe for the amount of monies set opposite their respective names.

It is hereby agreed by the undersigned that they have formed a syndicate for the purpose of acquiring lands in and around St. George, Washington County, Utah. The interests of the undersigned shall be divided into units of one unit representing each dollar advanced to the syndicate and all profits from the syndicate shall be divided pro rata among the syndicate members as their proportionate unit interest is to the whole.

John H. Morgan, Jr. shall manage the syndicate and shall make purchase agreements for the sole benefit of the syndicate. John Morgan shall receive for his services and for having conceived and developed the general promotion idea of the syndicate, 10 per cent of the net profits of said syndicate, and the syndicate agrees to pay for reasonable expenses of the manager.

Kathryn C. Bradford shall act as Secretary and Treasurer of said syndicate and keep account of receipts and disbursements which shall be open at all reasonable times to the syndicate members.

7th day of January, 1961.

SIGNATURE OF SUBSCRIBER	AMOUNT SUBSCRIBED
J. H. Morgan &	$3,000.00
Morgan Gas & Oil Co.	
by J. H. Morgan &	$3,000.00
Spalter Petroleum Co	3,000
Marion D. Spalter	3,000.00
John H. Morgan Jr.	3,000.00
Intermountain Rig	3,000.00
by John H. Morgan Jr.	
Bond E. Riccardella P.C.	$15,000.00
by Marion D. Spalter President.	

$1,000 each

Tab B

AMENDMENT TO SYNDICATE AGREEMENT

Reference is made to that certain Syndicate Agreement dated January 27, 1961, which by reference is made a part hereof.

To amend and clarify said Syndicate Contract it is agreed:

1. The name of said Syndicate shall be S-W-Associates.

2. John H. Morgan, Jr. was named manager of said Syndicate and has purchased certain real property in and near St. George, Washington County, Utah, in his own name for the sole benefit of said Syndicate. It is understood and agreed that all of said property purchased with Syndicate money shall be owned and under the control and disposition of said Syndicate. That in the event of the demise of said manager, John H. Morgan, Jr., the executor or admininstrator of his estate is hereby authorized and directed to transfer all property owned by said Syndicate, but in the name of John H. Morgan, Jr., to the name of the new manager or person selected by the Syndicate unit holders by a majority vote of said members.

3. It is further understood and agreed that the private property of the unit holders shall not be liable for the debts and obligations of the Syndicate.

4. Paragraph 3 of the original agreement is hereby amended as follows:

John H. Morgan, Jr. shall receive for his services for having conceived and developed the general idea of acquiring properties in the area of St. George, Washington County, Utah, and for acting as manager and taking care of the Syndicate business, an amount of units equal to ten percent (10%) of the total issued and outstanding units of S-W-Associates, to be issued

Dated at Salt Lake City, Utah this 12th day of July, 1961.

WITNESS:

_____

_____
J. H. Morgan, Sr.

MORGAN GAS & OIL CO.

_____

By _____ President
J. H. Morgan, Sr.

_____

JUSTHEIM PETROLEUM CO.

_____

By _____ President
Clarence I. Justheim

_____

_____
Clarence I. Justheim

_____

_____
John H. Morgan, Jr.

INTERNATIONAL URANIUM, INC.

_____

By _____ President

0008

Tab C

DISCLAIMER OF INTEREST
IN REAL PROPERTY

WHEREAS, B & E Securities, Inc., as one of several subscribers, entered into a syndicate agreement dated January 27, 1961, in which John H. Morgan, Jr. is identified as syndicate manager and which generally provides that monies contributed by subscribers shall be utilized in the purchase of real property in and around St. George, Utah, by the manager subject, however, to an obligation to distribute all profits from the sale or other disposition of such property to the subscribers pro-rata, and

WHEREAS, the real property (herein called the "Tracts") in Washington County, Utah, more particularly described on Exhibit A attached hereto and by this reference made a part hereof has been acquired by John H. Morgan, Jr. or the syndicate in accordance with the terms of said syndicate agreement and has been subsequently transferred or agreed to be transferred to Williamsburg-West, Incorporated, a Utah corporation, without derogation, however, of B. & E Securities, Inc.'s contractual right to share in profits, and

WHEREAS, it is in the interests of all subscribers, including B & E Securities, Inc., that Williamsburg-West, Incorporated show clear and unencumbered title to the Tracts for financing and development purposes.

NOW, THEREFORE, in consideration of the premises and $1.00 [illegible] of which is hereby acknowledged by B & E Securities, Inc., from Williamsburg-West, Incorporated and in consideration of the said Williamsburg-West, Incorporated reaffirming that it is the beneficiary of the contributions made by B & E Securities, Inc. to the above referred to syndicate and is subject to all obligations of the aforesaid syndicate agreement and will comply thereunder in all actions related to the distributions of profits distributable under said syndicate agreement; B & E Securities, Inc. does hereby disclaim any and all right, title and interest in and to the Tracts other than as provided hereinabove in favor of Williamsburg-West, Incorporated.

DATED this 30th day of August, 1973.

B & E SECURITIES, INC.

By _____
President

Attest:
_____
Secretary

WILLIAMSBURG-WEST, INCORPORATED

By _____
President

Attest:
_____
Assistant Secretary

Entry No. 157504 Recorded at request of Williamsburg-West, Inc.
Date October 10, 1973, at 10:20 A.M., Book 143, Page 238-247 Fee $ 37.50
Washington County Recorder. By _____ Deputy.

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00092

STATE OF UTAH)
) ss.
COUNTY OF WASHINGTON)

On the 11 day of [illegible], 1973, personally appeared before me [illegible] of B & L Securities, Inc. who being duly sworn did say that he is the President and that the foregoing instrument was signed in behalf of said corporation by authority of its Board of Directors, and said President duly acknowledged to me that said corporation executed the same.

NOTARY PUBLIC
Residing in: St George, Utah

My Commission Expires:

STATE OF UTAH)
) ss.
COUNTY OF SALT LAKE)

On the 30th day of August, 1973, personally appeared before me JOHN H. MORGAN, JR. of Williamsburg-West, Incorporated who being duly sworn did say he is the President and that the foregoing instrument was signed in behalf of said corporation by authority of its Board of Directors, and said President duly acknowledged to me that said corporation executed the same.

NOTARY PUBLIC
Residing in: Salt Lake City, Utah

My Commission Expires:
April 21, 1977

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00093

EXHIBIT A

Tract	Property
1.	Deed from Esther A. Hawkins, James Garland Andrus, Lillian Mathis Andrus, Charles W. Andrus and Ruth Williams Andrus:

Township 43 South, Range 16 West, SLM, Utah

Section 1: NW/4 SE/4

containing 40.08 acres, more or less, including water right-of-way.

2. Deed from William O. Bentley and Hettie S. Bentley:

That part of Lot One (1) in Block Three (3) of the Virgin Field Survey containing in all Two and 7/10 (2.7) acres of land be the same more or less the same being situated on the West side of the Utah-Arizona Interstate Highway and also being a part of the Jesse W. Crosby entry of Sectional Lots One (1), [illegible] Lake Base and Meridian. The said Crosby entry being in all Seven and 90/160 acres which is now divided in to three tracts, the part used for the Highway and those tracts situated on the East and West sides of the said Highway, the latter tract on the West being approximately 2.7 acres of land be the same more or less.

3. Purchase Agreement with Cecil Blake and Carol Blake:

PARCEL 1: Commencing at a point West 15.02 chains from the Northeast Corner of Section 1, Township 43 South, Range 16 West, SLB&M, and running thence West 7.50 chains; thence South along the Easterly line of Lot 7 in Block 2 of Charles A. Terry's Entry in the Virgin Field Survey, a distance of 17.39 chains to the North boundary line of existing Highway; thence *following the North line of said highway and running* South 70° East 3.04 chains; thence South 84° East 5.03 chains; thence leaving the highway, and running North 1°30' East 5.36 chains; thence East 6.13 chains to the highway; thence North following the West line of Highway, approximately 23° East 5.50 chains, to a point which is West from the East line of said Section 1, 6.34 chains, and being opposite across the highway from the Southwest Corner of Lot 4 in Block 12, Virgin Field Survey; thence West 3.66 chains; thence North 4.89 chains; thence West 5.02 chains; thence North 3.21 chains, be the same more or less, to the point of beginning, containing 21.0 acres, be the same more or less.

157501

PARCEL 2: All of the land lying North of the existing Highway which bounds Lot 5 in Block 2, Charles A. Terry's Entry of Virgin Field Survey, and embraced between Lots 4 and 6 in said Block 2, and containing 3.25 acres of land, be the same more or less. All being in Section 1, T43S,R16W, SLB&M.

Tract	Property

3. (cont.) PARCEL 3: All of Lots 10, 11, 12 and 13, in Block 2, Charles A. Terry's Entry of Virgin Field Survey, and bounded and particularly described as follows, to-wit:

Beginning at a point South 13.48 chains and East 25.38 chains from the Northwest Corner of the NE/4 of Section 1, Township 43 South, Range 16 West, SLB&M, and running thence South 1°30' West 5.36 chains, and continuing on 50 links across existing street, and continuing on 9.50 chains; thence South 41°30' East 3.25 chains; thence South 30° East 4.45 chains; thence North 67°East 2.35 chains; thence North 1° East, 20.16 chains, and continuing on 1.0 chain; thence West 6.13 chains to the point of beginning, and containing 11 acres, 137 Perches of land, be the same more or less.

PARCEL 4: All of Lots 1, 8 and 9, in Block 2, Charles A. Terry's Entry, Virgin Field Survey in Section 1, Township 43 South, Range 16 West, SLB&M, and containing 13 acres, 74 square rods of land, be the same more or less.

PARCEL 5: Lot 4, in Block 1, Charles A. Terry's Entry, Virgin [illegible], containing 5 [illegible], Utah Section previously deeded away, described as follows, to-wit: Beginning at a point East 17.47 chains from the Southwest Corner of the NE/4 of said Section 1, and running thence East 7.80 chains; thence North 1.50 chains to the Center of the Santa Clara Creek; thence North 44°45' West, 11.18 chains; thence South 9.50 chains to the point of beginning, containing 4.29 acres in the part herein excepted, and leaving a BALANCE HEREIN CONVEYED of 0.77 acre of land, be the same more or less.

PARCEL 6: Beginning at a point North 12.30 chains from the Southwest Corner of the NE/4 of Section 1, Township 43 South, Range 16 West, SLB&M, and running thence North 77° East 14.50 chains; thence South 57° East 4.00 chains; thence South 3.88 chains; thence North 81° West 17.70 chains, to the point of beginning, containing 5.53 acres of land, be the same more or less.

PARCEL 7: Lot 5, Block 2, Charles A. Terry's Entry, Virgin Field Survey, in Section 1, T43S, R16W, SLB&M, containing 4.21 acres, more or less.

PARCEL 8: Lots 6 and 7, Block 2, Charles A. Terry's Entry, Virgin Field Survey, in Section 1, T43S, R16W, SLB&M, containing 24.06 acres, more or less. LESS AND EXCEPTING FROM PARCELS 6 AND 8 ABOVE DESCRIBED, 5.00 acres of land deeded to F. K. Stucki, by Warranty Deed in Book S-33, Page 418.

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PARCEL 9: Beginning West 15.02 chains from the Northeast Corner of Section 1, Township 43 South, Range 16 West, SLB&M, and running thence South 3.21 chains; thence East 8.68 chains, to Highway; thence North 3.21 chains, to North line of Section 1; thence West 8.68 chains, to the point of beginning, containing 2.80 acres of land, be the same more or less.

PARCEL 10: Beginning at the Southwest Corner of the Lot 5, being also the Southwest Corner of the NE/4, Charles A. Terry's Entry in Section 1, Township 43 South, Range 16 West, SLB&M, and running thence North 12.3 chains; thence South 81° East 17.7 chains; thence South 11.50 chains to the South line of the NE/4 of said Section 1; thence West 17.47 chains, more or less, to the point of beginning, containing 19.31 acres, more or less.

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Tract Property

3. (cont.) PARCEL 11: Beginning at the Southeast Corner of Section 36, Township 42 South, Range 16 West, SLB&M, and running thence West 495.0 feet; thence North 3°00' West 150.00 feet; thence North 11°58' East 137.0 feet; thence North 23°34' East 398.4 feet; thence North 45°11' East 179.5 feet; thence East 331.0 feet; thence South 662.9 feet; thence West 147.0 feet; thence South 112.5 feet, to the point of beginning, containing 9.47 acres, be the same more or less.

TOGETHER WITH all improvements on each and every parcel of land hereinabove described, including all water and rights to the use of water in connection therewith, and specifically conveying herein _____ shares of Santa Clara Seep Ditch Company, and 13.0 shares of the capital stock in the St. George Valley Irrigation Company.

4. Deed from J. Gordon Blake and Della S. Blake:

Lots 4 & 6, Block 12, Virgin Field Survey. Also, Beginning at the NW corner said Lot 4 and running thence South along Lot line 4.89 chs; thence West 5 chs; thence North 4.89 chs; thence East 5 chs; m/l to the point of beginning in Sec. 1, T43S, R16W, SLB&M, Cont. 6.6 A.

Lots 11 and 12, Block 12, Virgin Field Survey in Wm. Lang's Entry of Sec. 31, T42S, R15W, SLB&M, Cont. 1.04 A.

Lots 3, 7 and 8 in Block 12, of the Virgin Field Survey in Jesse W. Crosby's Entry in Sec. 6, T43S, R15W, SLB&M, Cont. 5.03 A.

TOGETHER with all improvements thereon and all appurtenances thereunto belonging.

5. Deed from Vernon Worthen and Lorna P. Worthen:

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Beginning at a point West 561.0 feet from the Southeast Corner of Section Thirty-six (36), Township 42 South, Range 16 West, Salt Lake Base and Meridian, Utah, and running thence West 759 feet, more or less, to the Southwest corner of the SE/4 SE/4 of said Section 36; thence at right angles North 3762.0 feet; thence at right angles East 990.0 feet, to the Northeast corner of Block Two (2), of the Worthen Subdivision Extension in the SE/4 NE/4 of said Section 36; thence at right angles South 927.0 feet, to the Southeast corner of said Block 2; thence at right angles East 330.0 feet, more or less, to the East line of said Section 36; thence South, along said East line, a distance of 1646.0 feet, more or less, to the center of the St. George Valley Irrigation Company Ditch; thence along said center of said ditch Southwesterly 425.0 feet, more or less, to the point of intersection of said ditch with the County Road; thence following the Westerly side of said County Road South 45° 11' West 179.5 feet; thence South 23° 34' West 398.4 feet; thence South 11° 58' West 137.0 feet; thence South 3° 00' East 150.0 feet, more or less to the point of beginning, and containing 97.26 acres of land, be the same more or less, and being all of the NE/4 SE/4, part of the SE/4 SE/4, and all of Block 2, of the said Worthen Subdivision Extension, part of a street of said Subdivision Extension, in the SE/4 NE/4 of said Section 36, Township 42 South, Range 16West, Salt Lake Base and Meridian, Utah.

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Tract	Property

6. Purchase Agreement with J. Burton Burgess and Evelyn H. Burgess:

Parcel No. 1: All of lots 4 and 5, Block 1, and all of lots 2, 3 and 4, Block 2, of Henry Atkin's Entry in Section 1, Township 43 South, of Range 16 West, S.L.M., containing 21.10 acres of land, more or less;

Parcel No. 2: Also, beginning at the Southeasterly corner of lot 3, Block 2, of Henry Atkin's Entry, and running thence North 49° 20' West 10.13 chains; thence South 31° West 7.65 chains; thence East 11.65 chains; more or less, to the point of beginning, containing 3.87 acres, more or less.

Parcel No. 3: All of Lot 6, Block 1 and all of lots 5, and 6, Block 2, of Henry Atkin's Entry and Survey in Section 1, T43S, R16W, SLB&M, containing 12.71 acres, more or less.

Parcel No. 4: All of Lot 4 of Local Survey in Section 36, T42S, Range 16W, SLB & M, containing 1.78 acres, more or less.

Parcel No. 5: Beginning at the Southwest corner of Henry Atkin's Entry and Survey in Section 1, Township 43 South, Range 16 West, Salt Lake Meridian, and running thence North 11.20 chains; thence North 45° East 3 chains; thence South 62° East, 4.50 chains; thence South 64° 20' East, 10.40 chains; thence South 31° West, 7.65 chains; thence West 11.45 chains, more or less, to the point of beginning, containing 14.3 acres of land, be the same more or less;

LESS: Beginning at the Southwest corner of the NW/4 NW/4 of Section 1, Township 43 South, Range 16 West, Salt Lake Meridian, and running thence North 43 rods; thence North 43° 00'East 14 rods; thence South 64° 00' East 18 rods; thence South 58° 11' West, 29 rods; thence South 20 rods; thence West 1 rod to the place of beginning and containing 2.25 acres, more or less. Together with all improvements on each of the above described parcels of land and all appurtenances thereunto belonging;

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together with all improvements thereon and appurtenances thereunto belonging, including thirty-four (34) shares of irrigation water stock in the St. George-Clara Field Canal Company.

7. Purchase Agreement with Clive M. Burgess and Joan P. Burgess:

Section Lots 7, 8, 9, 10, 15 and 16 in Section 7, Township 43 South, Range 16 West, SLM, containing 229.61 acres, more or less.

Together with all improvements thereon and all appurtenances thereunto belonging, including all mineral rights owned by Grantors and not reserved by prior owners.

8. Deed from City of St. George:

Beginning at a point which is North 1324.29 feet and East 267.90 feet from the SW corner of Section 31, Township 42 South, Range 15 W. S.L.M. Thence East 580.20 feet; thence South 0° 45' W 497.15 feet; thence N 89° 15' W 573.74 feet; thence North 489.60 feet to the point of beg. Containing 6.53 acres

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Tract Property

8. (cont.) Together with all improvements thereon and appurtenances thereunto belonging, reserving however, unto the said Grantor all existing rights of way across said property and any and all easements and rights of way for utility or water lines located upon the said property.

9. Purchase Agreement with Grant Empey and Mary Empey:

Lot Four (4) in Block Three (3), containing four acres and sixty-three square rods of land; and Lot Five (5) in Block Three (3), containing 98 square rods of land, all being in Virgin Field Survey; said Lot 4 being in Charles A. Terry's Entry of NE/4 Section One (1) Tp. 43 South, Range 16 W.S.L.M., and said Lot 5 being in Jesse W. Crosby's Entry in West half of Northwest quarter of Section 6, T 43 S R 15 W.S.L.M., together with the water rights appurtenant thereto, consisting of nine (9) shares of stock in Santa Clara Seep Ditch Company, containing 5.25 Acres.

Excepting and reserving to the Grantors all oil, gas, and other mineral deposits together with the right to remove the same. The Grantors agree to compensate the Grantees for any damages occasioned by prospecting or removing oil, gas or minerals from the premises heretofore described.

10. Purchase Agreement with Hyrum Empey and Mary H. Empey:

Beginning at a point 18 chains and 62-1/2 links south from the Northeast corner of Section 1, Township 43 South, Range 16 West, Salt Lake Meridian, and running thence North 89° West, 6 chains and 39-1/2 links; thence South 1° West 5 chains; thence East 10 chains and 26-1/2 links; thence North 4 chains and 97 links; thence North 89° West, 1 chain and 81-1/2 links to the place of beginning and containing 5 acres and 39 perches of land, be the same more or less.

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Together with all my right, title and interest in and to 8 shares of water in the seep ditch, without any obligations on my part to defend the same.

11. Deed from Don H. Empey, LaVern Empey, William K. Empey and Ella Empey:

Jesse W. Crosby's Entry Lot 7, Blk. 3, Sec. 6, T. 43 S., R. 15 W., SLM, containing .9 acres.

12. Deed from Anthony Foremaster and Annette Foremaster:

Beg. at NW cor NE/4 SE/4 Sec. 1 Tp 43 S., R. 16 W., SLM and run th S 15 rods; th NEly 23 rds; th N 27 rds; th SW 8 rds; th S 6 rds; th W 15.4 rds; th to beg. Cont. 2.33 A. Less Beg. at NW cor NE/4 SE/4 and run th E 3.70 chs; th N 6 rds; th E 10 ft; th S 6 rds; 10 feet; th W 3.85 chs; th N 10 ft; to beg. Con. 1.98 A.--Lot 9 Blk 3, Chas. A. Terry's Ent. in the S/2 NE/4 and lots 1 and 2 Sec. 1, Tp 43 S., R. 16 W. SLM. Cont. 2.43 A.--Lot 10, Blk 3 of Jesse W. Crosby Entry in Sec. 6, Tp 43 S. R. 15 W. SLM Cont. .56 A.--Totaling 4.97 A., including all water rights.

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Tract	Property

13. Deed from Loren Giles and Mildred Giles:

Beg. at a pt. S. 16.5 ft from E 1/4 Cor. Sec. 1, Tps. 43 S., R. 16 W., SLM and run th S. 255 ft.; th N. 88°33' W. 1324 ft.; th N. 80°30' E. 1339 ft. to beg. Cont. 3.75 A.

Beg. at a pt. E. 105.6 ft. from the W 1/4 Cor. Sec. 6, T. 43 S., R. 15 W., SLM and run th N. 52°30' E. approx. 264 ft. to the right-of-way of Interstate Highway 15; th southerly along the right-of-way of the Interstate Highway 15 approx. 412 ft.; th S. 88°30' W. approx. 330 ft.; th N. approx 264 ft.; th E. 105.6 ft. to place of beg.

14. Certificate of Sale No. 24036 from the State of Utah--assigned to Williamsburg-West:

LOTS 5,6,7,8,9,10 of Section one (1), Township 43 South, Range 16 West, SLM, 233.22 acres.

15. Deed from Reed Graff and Mary B. Graff:

PARCEL 1: Beginning at a point South 271.5 feet from the W 1/4 Corner of Section 6, Township 43 South, Range 15 West, SLB&M, Utah and running thence N. 88°30' E. 718.0 feet; thence South 1067.0 feet;thence West 716.0 feet; thence North 1049 feet to the Point of Beginning. Containing 17.43 Acres. LESS right of way of Highway (5.87 A). Balance 11.56 A.

PARCEL 2: Beginning at a point South 271.5 feet from the E 1/4 Corner of Section 1, Township 43 South, Range 16 West, SLB&M, Utah and running thence South 1048.5 feet; thence West 1320.0 feet; thence North 1082.4 feet; thence N. 88°33' E. 1324 feet to the point of Beginning. Containing 32.5 A.

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Total 44.06 Acres.

16. Deed from Clarence A. Jones and Madeline E. Jones:

Jesse W. Crosby'e Entry. Lot 2, Blk. 1, lot 2, Blk. 3, Sec. 6, T. 43 S., R. 15 W., SLM, Cont. 6.07 A.

Less Highway Right of Way cont. 1.97 acres and less east of Highway, approx. 1.40 acres, bal. 2.70 acres.

Lot 3, Blk. 1 and Lot 3, Blk. 3 of Charles A. Terry's Entry in Sec. 1, Tp. 43 S., R. 16 W., SLM. Less .68 A. deeded to Antone Foremaster. Bal. 12.06 A.

Beg. at NE cor. NE/4 SE/4 Sec. 1, Tp. 43 S., R. 16 W., SLM, and run th W. 57 rds; th S 12 rds; th NE'ly 58.3 rds; th N 1 rd to beg. Cont. 2.34 A.

Total 17.10 acres, more or less.

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Tract Property

17. [illegible] Virgil McArthur and Emma C. McArthur:

PARCEL 1: Lots Two (2), Three (3), and Four (4), in Block Two (2) of Charles A. Terry's Entry in the S/2 NE/4 and Sectional Lots 1 and 2 of Section One (1), Township 43 South, Range 16 West, Salt Lake Base and Meridian, Utah, containing 9.75 acres, more or less.

PARCEL 2: Lot One (1), Block One (1), and Lot One (1), Block Two (2), of Henry Atkin's Entry of Sectional Lots 3 and 4, in Section One (1), Township 43 South, Range 16 West, Salt Lake Base and Meridian, Utah, containing 5.61 acres, more or less.

CONTAINING in the aggregate 15.36 acres, more or less.

Together with all improvements thereon and all appurtenances thereunto belonging, INCLUDING Thirteen (13) Shares of Water in the St. George-Santa Clara Field Canal Company.

18. Deed from Phoebe Delilah Mitchell:

All that part of lots 6, 11, 17 and 18 in Blk. 3, Virgin Field Survey, Lying Westerly of State Highway, in Jesse W. Crosby's Entry of Sec. Lots 3 & 4 in Section 6, Twp. 43 So., R. 15 W., SLB & M and containing 4.25 Acres be the same more or less, including water rights amount to Nine shares.

19. Deed from Ferdinand Stuckl and Iona B. Stuckl:

All of Lots 13, 14 and 15, Block 3 of the Virgin Field Survey, embraced within the Charles A. Terry Entry of the NE/4 of Section 1, Township 43 South, Range 16 West, SLM, containing 5.10 acres of land, more or less.

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All of Lots 12 and 16, Block 3 of the Virgin Field Survey, embraced within the Jesse W. Crosby Entry in Section 6, Township 43 South, Range 15 West, SLM, containing 1.44 acres, more or less.

Beginning at the Southwesterly corner of Lot 6, Block 2, of the Virgin Field Survey embraced within the Charles A. Terry Entry in the NE/4 of Section 1, Township 43 South, Range 16 West, SLM, and running thence South 81° 00' East 44.0 rods, more or less, to a roadway; thence Northeasterly, following the meandering line of said roadway, on the Westerly side thereof; a distance approximately 50.5 rods, more or less, to a point of intersection of said roadway and a roadway running Southeasterly and Northwesterly, said point of intersection being on the Easterly line of Lot 7, said Block 2 of said Terry Entry; thence Northwesterly along the Southerly line of said NW-SE roadway a distance of 14.0 rods; thence Southwesterly approximately 45.0 rods, more or less, to a point on the Southerly line of said Lot 7, Block 2 of said Terry Entry, said point being North 77° 00' East 33.0 rods from the Southwest corner of said Lot 6, Block 2 of said Terry Entry, thence South 77° 00' West 33.0 rods, to a point of beginning, containing 5.78 acres and being a part of Lot 5, Block 1 and part of Lot 7, Block 2 of said Charles A. Terry's Entry, together with improvements and appurtenances thereon.

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Tract Property

20. Deed from Ross Syphus and Shirley Ann A. Syphus:

Beginning at a point on the West boundary of Section 31, Township 42 South, Range 15 West, S.L.B.&M., which is North 838.70 feet from the Southwest corner of said section; thence North 486.09 feet; thence East 267.90 feet; thence South 489.60 feet; thence North 89°15' West 267.92 feet to beginning. Containing three (3) acres.

21. Deed from Andrew B. Pace and Verda Pace:

Beginning at a point North 841.0 feet, more or less, at the point of intersection of the East line of Section 36, Tp. 42 S., R. 16 W., S.L.M. and the North boundary of the County Road and running thence West along the North boundary of the County Road 241 feet, more or less, to the center of the St. George Valley Irrigation Company Ditch; thence Northeasterly following said ditch 425 feet, more or less, to the point of intersection of said Ditch with the East boundary of Section 36, Tp. 42 S. R. 16 W., S.L.M.; thence South 348 feet, more or less to the place of beginning and containing 0.96 acres of land be the same more or less.

TOGETHER with all improvements thereon and appurtenances thereunto belonging.

This EXHIBIT A to Disclaimer of Interest in Real Property, consisting of pages 1-8, inclusive, has been approved by Williamsburg-West, Incorporated.

John H. Morgan, Jr., President

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Tab D

:nterprise

Monday, February 22, 1993 Salt Lake City, Utah 75 Cents

nessee firm to enter
e-acre travel center

File # 8709016 32

Pilot

RAVEL CENTERS

planning another travel center in southern Utah.

and Dairy Queen." No deci-
as been made as to which
se will be placed in the Ogden
center. "We run them our-
— a full size restaurant but
our building," he added.
oth the individual traveller and
professional transporters are targeted by Pilot, said Haslam. "We really concentrate on both markets. Our customer mix is about two-thirds autos to one-third professional truck drivers," he explained.

see PILOT page six

Judge rules against St. George Hilton insiders, bars directors from board

by Barbara Rattle
Managing Editor

A group of shareholders of Utah Resources International Inc., a public firm which owns a majority interest in the St. George Hilton Inn in addition to other developments in Washington County, has won a nearly $2 million judgment against the firm's officers and directors for "gross mismanagement, abuse of power, waste and/or usurpation of corporate opportunities."

An appeal is planned.

Third District Court Judge Michael R. Murphy has ordered that defendants John H. Morgan Jr., Daisy Morgan, Stanford P. Darger, William F. Delvie and Justin R. Barton pay $1,954,129 to Utah Resources International for having had the firm engage in a number of complex transactions in which they either had a personal interest, or with respect to which they "failed to exercise due care in ascertaining relevant facts and law."

In addition, the defendants have been ordered to give to Utah Resources 10,000 shares of the company's stock or the equivalent monetary fair market value of the stock for damages sustained by the firm as a result of a 1985 stock bonus granted the defendants.

The bulk of the money that Utah Resources is to recover — some $1.5 million — revolves around a transaction wherein Utah Resources traded land for advertising.

Between 1980 and 1991, according to Judge Murphy, the company traded 25.8 acres valued at $1.99 million to various media for advertising time. From 1980 to 1990, the firm's gross revenues were $7.8 million while its net income was $572,749.

According to Salt Lake attorney E. Jay Sheen, who with Jeffrey Robinson and Mark W. May represented the plaintiffs, Utah Resources, during most of the time in question, owned 43 percent of the Hilton Inn. The balance, he said, was owned by a group of other parties. They consisting largely of the Morgan family or entities owned or controlled by them.

see HILTON page 10

oliday sales boost sales tax revenue
$8.7 mil., but income projections fall

g McEntee
iated Press Writer

ust Christmas sales boosted
ax revenues by $8.7 million
current fiscal year, but pro-
income for 1993-94 declined
y, Legislative Fiscal Analyst
lemmott said last week.

get writers also are awaiting
ent Clinton's tax and spend-
n to see if higher federal in-
taxes will affect the state's
City.)

's military aome taxes, said
Majority Leader Rob Bishop
gnd defense industry, already
it by layoffs, could suffer more
ton cuts the Pentagon's budsources.

Sales taxes were up $11 million from Memmott's earlier forecast of $8.59 million. But beer, cigarette and tobacco revenues declined by $1.5 million and mineral severance taxes by $2(X),(XX), leaving the $8.7 million.

That money can be put into current fiscal year projects as one-time supplementals because it represents a windfall in the budget written by the 1992 legislature.

And with acute needs in the state's educational and human services systems, it's highly unlikely the $8.7 million will go to a new baseball park in Salt Lake City, said House Majority Whip Christine Fox (R-Lehi).

"No, I don't think so," she said, adding that the Republican caucus in the predominantly GOP legislature will begin talking about where to put the money in later meetings.

see REVENUE page 10

Public offering expected to raise $7.5 million for expansion of Solitude

'actor of year

alls all types of electrical communications systems, ently has offices in Logan Lake. In addition to serving Utah, Cache Valley Elec- sently completing projects sas, South Carolina and

Hilton (continued from page one)

It was "grossly unreasonable" for Utah Resources to contribute advertising without a "corresponding increase in its equity holdings or as an interest-bearing loan," according to Judge Murphy's findings of fact and conclusions of law.

The judge also states that between 1981 and 1991, no formal meetings of the firm's board of directors were held, as business was transacted by "unanimous written consent."

Darger, Delvie and Barton have been removed as directors of the corporation and have been precluded by the court from ever again serving on its board.

The Morgans have also been removed from the board, but may be reappointed to any subsequent Utah Resources board after five years. However, no new directors can be related by blood, adoption or marriage to any of the individual defendants.

"The court determines that it does have the equitable power to remove directors," Judge Murphy wrote. "Without this power, the court could not prevent continuing harm to the corporation and would be limited to adjudicating a continuum of suits for damages."

Utah Resources, according to Judge Murphy's findings, has approximately 650 shareholders. It is the general and limited partner — and at present approximately 80 percent owner — of Resources Limited Partnership, which owns and operates the St. George Hilton Inn, for which Mrs. Morgan acted as general manager from 1978 until December 1984.

Darger was a senior vice president of Valley Bank, while Delvie is president and chairman of the board of Delvie Plastics Co. Barton is comptroller and general manager of Freeport Corp. in Freeport, Illinois.

Delvie is Mr. Morgan's brother-in-law, while Barton is Mrs. Morgan's nephew.

Attorney Sheen, representing the plaintiffs, who according to Judge Murphy are joined by other shareholders who have been "dissatisfied" with the management of Utah Resources, said it is fairly uncommon for courts to remove members of boards of directors. Indeed, Judge Murphy termed the removal "drastic."

Utah Resources is solvent, Sheen said, and while its shares are not actively traded, it is hoped that new management may change that.

The complaint was filed in 1987.

Judge Murphy also ordered the individual defendants to pay $5 each in punitive damages. Defendant Darger, according to court records reviewed Thursday, has already requested a new trial.

Judge Murphy dismissed claims by the defendants that there had been a conspiracy against them by the plaintiffs.

Mr. Morgan said last week he feels the judgment is "not fair at all — we haven't hurt the company, we've benefitted it tremendously."

The advertising in question, he said, "increased the assets of Utah Resources and helped very much in the growth and popularity of the St. George area. If St. George grows and develops, that's exactly what will happen to our company."

"We used land [for the advertising trade] that was purchased for $100 per acre on average, and traded on the basis of $80,000 an acre," he said. "It's been a wonderful basis of success for the company. It's helped the growth, prosperity and popularity of St. George, which is the fastest growing retirement community in America, behind only Fort Meyers, Florida.

"We're just trying to increase the value of every acre of land we own."

Revenue (continued from page one)

Assistant House Minority Whip Grant Protzman (D-North Ogden), said he'd like to see the extra money used to help Utah's defense industry retool for peacetime work and establish retraining programs for displaced workers.

Overall, the general and uniform school funds projections for fiscal 1993-94 are down by about $1.1 million, largely due to individual income tax declines.

"That's close enough to call it a rounding error," Bishop said.

Still, he said, appropriations subcommittees will have their work cut out for them in writing next year's budget.

Protzman, who is sponsoring legislation to put an income tax restructuring referendum on the 1994 ballot, said Utah also needs to take a hard look at its tax system to cope with a changing economic base.

"It's going to get worse before it gets better," he said.

Bill thwarts city's attempt to license businesses making deliveries

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Legislation is being proposed by a Utah senator in a bid to thwart

"For example, a magazine distributor who makes deliveries to